IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8444 OF 2006

Munawar G. Chinoy. .. Petitioner.

vs.

Bakhatawr B. Chenoy & Ors. . .. Respondents.

Mr. Behram Sroff i/by Chandra Naik

for petitioner.

Ms. Alpana Ghone i/by Sonal Doshi & Co.

for Respondent No. 1.

CORAM : A.P. DESHPANDE, J.

DATE : 20th December, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The respondent no. 1 in this petition is claiming a right to be admitted to the membership of the Willingdon Sports Club, by contending that the respondent no. 1 has been validly admitted as a member of the Club. The respondent no. 1 instituted a suit. The suit has been filed in the year 1999 is pending on the file of the City Civil

Court, Bombay. Issues were earlier framed on 1.11.2003 and issue no. 4 reads thus :-

> "Whether the defts. proves that the suit filed is without any triable cause of action?"

At a later point of time, the Court by an order dated 4.8.2006 deleted all the issues framed on 1.11.2003 and in its place substituted new issues. The petitioner's main objection is in regard to the failure on the part of the City Civil Court to frame issue no. 4 for adjudication.

3. Perusal of the impugned order reveals that the submissions were made before the said court questioning the exercise of the jurisdiction by the civil court in relation to the decision of the domestic tribunal/clubs/associations. Issue No. 4 was rightly framed touching that aspect which has been dealt with by the impugned order of the City Civil Court with reference to the judgments cited in para 4 of the impugned order.

4. The learned counsel for the petitioner submits that the failure to frame issue no. 4 which was in fact framed on 1.11.2003 in the reframed issues may result in miscarriage of justice, for the reason that the valid contentions made by the

petitioner depend on the said issue which touches the exercise of jurisdiction by the civil court. He further submits that no prejudice would be caused to the plaintiff if the said issue is framed. The learned counsel for the respondent has tried to justify deletion of issue no. 4.

5. Having regard to the totality of the facts and circumstances and perusal of the impugned order, I am of the view that issue no. 4 as framed on 1.11.2003 by the trial court need to be included in the issues framed on 4.8.2006 as the same would enable the court to achieve finality in adjudication of the dispute in issue. As I am of the view that failure to frame issue no. 4 may result in miscarriage of justice, with a view to advance the cause of justice, I interfere with the order impugned in this petition and direct the trial court to include the issue no. 4 framed on 1.11.2003 as one of the issues in the issues framed by it on 4.8.2006. Hence, writ petition is partly allowed to the above extent and disposed of.

6. The learned counsel for the respondent no. 1 submits that the suit is pending since the year 1999 and hence the same is required to be disposed of expeditiously. Having regard to the peculiar facts of the case, I direct the City Civil Judge to decide the suit as expeditiously as possible and

preferably within a period of six months from today.

(A.P. Deshpande, J.)